SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Nos. 480-487

ROBERT MURDOCK, JR., ANNA PERISICH, WILLARD L. MOWDER, CHARLES SEDERS, ROBERT LAMBORN, ANTHONY MALTEZOS, ANASTASIA TZANES, and ELLAINE TZANES,
Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)
Respondent

ON CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITIONERS' BRIEF

HAYDEN C. COVINGTON
Attorney for Petitioners

INDEX.

Subject Index

CASES CITED

Cases Cited

Statutes Cited

Miscellaneous Citations

Miscellaneous Citations

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Opinions Below

The opinion of the Superior Court is reported in 149 Pa. S. C. 175 and is also unofficially reported in 27 A. 2d 666.

Jurisdiction

Jurisdiction of the Supreme Court of the United States

is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

Timeliness

The judgments of the Superior Court of Pennsylvania were rendered and entered July 23, 1942. (R. 122-125) Such judgments became final on September 28, 1942, when petitions for leave to appeal to the Supreme Court of Pennsylvania were denied and allocatur refused. R. 126-135.

The petitions for writs of certiorari were filed within three months from the date of refusal of allocatur.

The Statute

The legislation, the constitutionality and validity of which, as construed and applied to petitioners, is here drawn in question, is an ordinance, Number 60 of the City of Jeannette, Pennsylvania, which reads as follows:

"City of Jeannette, Pa.
Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby or-

dained and enacted by the authority of the same.

Section I.[1] That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For One day $1.50, for One week seven $7.00 dollars, for two weeks twelve $12.00 dollars, for three weeks twenty $20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor, the sum of ten $10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred $100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be

[1] Section *one* of the ordinance providing for payment of a tax of $1.50 per day applies only to *canvassing and soliciting* of orders or delivering under orders and does not apply to *peddling or huckstering*. It is not contended that petitioners solicited *orders*. They were prosecuted for peddling and huckstering without payment of the $10 daily license. See record in *Stewart* v. *Jeannette*, 309 U. S. 674, 699, No. 722, October Term 1939, certiorari denied.

sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A.D. 1898.

D. E. Carle, President of Council.

Attest: Geo. S. Kirk, Secretary.

I, J. Claire Manson, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. Claire Manson, City Clerk."

[Seal]

The entire text of the above ordinance appears in the record. R. 8a-9a, 20a-21a.

Special History of this Controversy

This particular ordinance has been the object of litigation in the courts, Federal and Commonwealth, for years, beginning in 1939 with the case of *Commonwealth* v. *Stewart*, 137 Pa. S. C. 445, 9 A. 2d 179. There the appeal was dismissed for technical reasons. Subsequently Stewart sought a writ of certiorari, by petition, from this Court to the Mayor's Court of Jeannette to review the judgment of conviction. Presumably the reason for this Court's denial of certiorari in 309 U. S. 674, 699 was that the case was disposed of on adequate non-federal grounds, that is to say, petitioner Stewart had not properly complied with recognized practice in the courts of Pennsylvania in taking his appeal from the Mayor's Court to the Court of Quarter Sessions. Again in 1941 validity of this ordinance was questioned in *Ferree et al.* v. *Douglas, Keeper, etc.*, 145 Pa. S. C. 477, 21 A. 2d 472, where the Superior Court again refused to consider validity of the ordinance. On May 2, 1941, the

United States District Court declared this ordinance unconstitutional as construed and applied to petitioners. *Douglas* v. *City of Jeannette et al.*, 39 F. Supp. 32. The City of Jeannette appealed the case to the United States Circuit Court of Appeals for the Third Circuit, and on August 31, 1942, that court (130 F. 2d 652) reversed the judgment of the United States District Court, declaring that the writer of the opinion and another Circuit Judge agree with the minority opinions of Chief Justice Stone and Justice Murphy in the case of *Jones* v. *Opelika*, 316 U. S. 584-624 (judgments *vacated* Feb. 15, 1943, and cases restored to docket for reargument at March 1943 session), that the ordinance was unconstitutional but because forced to follow precedent they reluctantly reversed the District Court. See page 161 of the Record of No. 450, October Term 1942, on docket of this Court styled *Douglas* v. *Jeannette*.

Statement

Petitioners were each charged by Information filed in the Mayor's Court of the City of Jeannette, February 25, 1940, with an alleged violation of the foregoing ordinance. In the Information, among other things, it is alleged that:

> "on or about the 25 day of February A. D. 1940, Defendant aforesaid did then and there unlawfully solicit sales of books and pamphlets, and did sell and deliver the same from door to door in the City of Jeannette, without a license, all of which is contrary to an Ordinance No. 60 Sec. 1" [R. 10a, 22a.]

Jehovah's witnesses were first arrested in the City of Jeannette for preaching the gospel from house to house on March 12 and 19, 1939. (See Transcript of Record in *Douglas* v. *Jeannette* No. 450 Oct. Term 1942, pages 28-32.) In order to clarify the matter and remove any possible misunderstanding, Charles B. Hessler, supervising minister

for Jehovah's witnesses in the Pittsburgh area, delivered to the Mayor and Chief of Police of Jeannette a letter explaining that Jehovah's witnesses were ministers of the gospel, preaching the gospel by distributing Bible literature from house to house and were calling to find people of good will toward Almighty God Jehovah, as commanded in the Scriptures. (Isaiah 61:1-3; Ezekiel 9:4; Matthew 24:10; 10:7, 15; Luke 10:5, 6; John 18:37; Acts 20:20; 1 Peter 2:9, 21) In said letter the City of Jeannette was advised as follows:

> "We who engage in this work come to your community not to canvass or solicit, nor to peddle goods, wares or merchandise. We do not ask for a permit, for the reason that the Almighty Creator, JEHOVAH, whose law is above all laws, commands us, as His witnesses, to preach the gospel of His kingdom; therefore to ask any human creature for a permit would be an insult to Jehovah and a violation of our covenant with Him, and would result in our everlasting destruction.—Acts 3:22, 23; Acts 4:19, 20; Acts 5:34-39." [Plaintiffs' Exhibit 2 in *Douglas* v. *Jeannette*, No. 450 Oct. T. 1942. See pages 29 and 30 of the record in *Douglas* v. *Jeannette*, No. 450 Oct. T. 1942.]

Thereafter arrests continued from such time to May 13, 1941, the date of the injunction decree entered in the United States District Court. See pages 135 to 145 of the record in *Douglas* v. *Jeannette*, No. 450, Oct. T. 1942.

Statement of Facts[2]

The occupation of each petitioner is ordained minister of Jehovah God, representing the Watch Tower Bible & Tract Society, a Pennsylvania corporation, and, as such representative, certified by said Society to be one of Jehovah's witnesses preaching the gospel of God's kingdom, The Theocracy. A sample of the credential of ordination carried by each appellant was received in evidence. (R. 77a) As such ordained ministers, appellants called from house to house presenting to the people the gospel in printed form. In this they acted exactly as did the Lord Jesus Christ and His apostles, who taught publicly and from house to house.—Luke 8:1; 13:26; Acts 5:42; Acts 20:20; 1 Peter 2:9, 21.

Each petitioner approached the homes of the people of Jeannette in an orderly and proper manner by knocking at the door or ringing the doorbell. When the householder or occupant arrived at the door the caller presented his 'testimony card', entire text of which appears in the Record at page 78a.

Each petitioner also offered to play (and did play when permitted) a record entitled "Snare and Racket"; showing the clear distinction between "religion", which is demonism, and Christianity, which is the true worship of Almighty God. That phonograph record was reproduced in open court and appears transcribed in the record. R. 60a to 62a.

When the householder had fully considered the card or record the caller exhibited the literature, a book entitled "Salvation" and certain booklets. If the householder desired the literature he could immediately accept and keep it. If

[2] Since this Court, in *Jones* v. *Opelika*, supra, said that it desires to know the income and disbursements from petitioners' activity it is necessary to go into a long detailed analysis of evidence in the record.

financially able and willing, he could at the same time contribute the sum of twenty-five cents to help print and distribute more like literature. If unable at the time to contribute any sum, he could nevertheless accept and retain the proffered literature, *gratis*, upon condition that he agree to study its contents with his Bible.

Contents of said literature related exclusively to a revelation of God-given prophecies of the Bible as such are being fulfilled in modern times, showing that this is the time of "the end" foretold in Holy Writ, as evidenced by the rapid advance of the Devil's dictator-totalitarian rule projected and pushed by a giant totalitarian religious organization which is bent on achieving *world domination* by destroying all democracy from off the earth and ruling the peoples of all nations with an iron hand; and that the people's only hope of escape from such scourge is "the battle of that great day of God Almighty" at Armageddon (Revelation 16: 13-16), now near, when JEHOVAH, the Almighty God, will completely destroy His and mankind's chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, and which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to those on earth who survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of the Creator be raised from the dead to live in perfection upon earth in obedience to the righteous laws of Jehovah's Government under His King Christ Jesus and God's resurrected "princes in all the earth".—Isaiah 32: 1; Micah 5: 4, 5; Psalm 45: 16.

Upon any householder's indicating unwillingness to read the caller's card, listen to the phonograph or obtain the literature, the caller would quietly pass on to the next house.

The evidence failed to show, and it is not contended, that

petitioners 'trespassed' or were in any case offensive or annoying in their method of presentation. They were quiet and courteous in their dealings with everyone whom they approached in Jeannette.

The undisputed evidence showed that the bound books entitled "Salvation" and "Creation" distributed by petitioners were published and distributed by the Watch Tower society for cost of 20 cents per volume to local organizations or congregations of part-time workers and ministers referred to in the testimony as "companies". (R. 101a-102a; 67a) That the local congregations or companies had expenses of maintaining a meeting hall or place of worship. That the society permits the local organization to make its own rules as to amount to be contributed by the local ministers engaged in such part-time work. That such *companies* whose members had been assigned the City of Jeannette as territory to preach in had established the rate of 25 cents per volume to be contributed by each member or minister for the literature which he distributed from house to house. (R. 83a; 93a; 101a-102a) That such assessed figure included a difference of 5c per volume to defray local meeting hall expense (R. 87a) and did not permit the making of any profit whatsoever on the literature placed. (R. 101a) That the publisher or minister had to bear his own expense of travel to and from territory and cost of any books or literature placed with the people without contribution, which expense was not taken care of from money received from books placed but by money earned by the petitioners in their secular activity. Thus each petitioner operated at a loss. R. 64a; 66a.

The exception to the above arrangement was the petitioner Robert Lamborn, a resident of Cadiz, Ohio, and a member of the Cadiz congregation of Jehovah's witnesses, who was visiting in Jeannette and vicinity on the day in question. He obtained his literature from the Cadiz congregation. This congregation let the books to members of the congregation, ministers, for distribution from house to

house on the basis of 20 cents per volume paid by each minister. He also paid three cents per volume for the booklet "Government and Peace" which he gave free of charge with every bound volume placed and to persons too poor to contribute. That he gave away many volumes of literature to persons who contributed no money. That on the whole he spent more money than he took in from the public and what he contributed to the work exceeded his expenses. In addition to this he has his expense of travel, etc., for which he receives no reimbursement. Lamborn is a farmer and earns his living from the soil. (R. 73a; 65a-76a) He did not make any profit from literature placed in Jeannette or elsewhere. R. 76a.

The other exception was petitioner Earl Singer, the only full-time publisher, "pioneer minister," who said that the *society* had made arrangements for full-time ministers to receive the books for five cents each (a discount of fifteen cents under cost of publication) or one-fourth of the cost price paid by the congregations to the society because they do not ordinarily have support from secular activity as does the part-time minister. This discount on each book was a contribution from the society to aid the full-time publisher to defray expense of operation and to bear the expense of giving away literature free. In his own case, however, Singer testified that he made his living and obtained necessary financial support from money received from his trucking business which he owned and that he did not make any money whatsoever from his preaching activity from house to house because in the long run he gave away more literature free than what he distributed to those who contributed. That over a month's time his expense in preaching far exceeded the amount of money received from contributions. R. 100a-105a.

The case of Charles Seders is typical of all the *part-time* ministers, petitioners. He contributes 25c per book to his local congregation and distributes the books from house to house at the same contribution. During January, 1940, the

month prior to the trial in the Mayor's Court he had distributed 37 bound books, receiving contributions only from persons who accepted half of that number. His secular occupation was as a tin-mill worker. He preached from house to house on Sundays. R. 90a-96a.

While the testimony of the witnesses for the Commonwealth is that some of them "bought" literature from some of the petitioners for "25c" they uniformly admitted that what was actually said was "How much are they?" and were advised '25 cents per volume'. (R. 44a-47a; 50a; 32a-34a) Some also testified that it was considered their duty to *buy* a book so as to enable the police to arrest petitioners. (R.40a-44a) (R. 32a-34a) Their conclusions or statements that they "bought" and that petitioners "sold" the literature do not transform the real, true *nature of the transactions* and petitioners' good work from charitable and beneVolent activity to commercial business. So to view petitioners' *ministerial work* would allow for an unbeliever to go into any church building or synagogue and place a quarter in the contribution box or plate and later come into court and testify that he "bought" or "purchased" a sermon, in an effort to falsely label and transform the "church" from a place of worship into a commercial store-house.

The undisputed evidence is, therefore, that six of the eight petitioners obtained the literature from their local congregations at 25 cents per volume and placed it with the public while preaching from house to house, receiving contribution in the same or less amount; therefore no "profit" was made on their transactions. That they gave away much literature free of charge. That two petitioners obtained literature at a cost less than the maximum sum contributed by a recipient-householder, but that, due to expense and giving away more than half of the literature placed without receiving any contributions, they operated at a loss to themselves and preached without pecuniary gain, profit or benefit to themselves. Therefore the conclusion of the Superior Court and the Mayor's Court that the

activity was commercial is wholly without foundation in fact, reason or law.

The phonograph record "Snare and Racket" and the printed card used by petitioners to introduce the literature to the people do not support the conclusion or statement that there were any sales of literature in Jeannette on February 25, 1940, the date of petitioners' arrest. These instruments appear in the record at pages 60a-62a and 77a-78a.

History of Proceedings and Federal Questions Raised Below

MAYOR'S COURT PROCEEDINGS

In the Mayor's Court at the close of the Commonwealth's case and at the close of the entire case petitioners duly filed their motion to dismiss on the ground, among other things, that the ordinance as applied deprived them of their rights of freedoms of press, speech and worship of Almighty God contrary to the United States Constitution. (R. 59a-60a; 106a) On February 26, 1940, said motions were overruled, petitioners adjudged guilty and fined $50 each or in default thereof to spend 30 days in the Westmoreland County Prison. R. 60a, 107a.

QUARTER SESSIONS COURT PROCEEDINGS

On March 1, 1940, petitioners by written petition for appeal to the Quarter Sessions Court of Westmoreland County complained of the judgment against them under the ordinance because as applied it abridged their rights of freedom of speech, press and of worship, contrary to the Fourteenth Amendment to the United States Constitution. (R. 6a; 18a) The petitions duly filed were continued indefinitely from term to term by the judge of the Court of Quarter Sessions of Westmoreland

County. The Quarter Sessions Court, on February 20, 1942, found that the appeals involved the constitutionality of the ordinance, and denied the appeals because the questions raised were no longer disputable on authority of *Stewart* v. *Commonwealth*, 309 U. S. 674; and *Pittsburgh* v. *Ruffner*, 134 Pa. S. C. 192. R. 110a, 111a.

SUPERIOR COURT AND SUPREME COURT PROCEEDINGS

Appeals were duly taken to the Superior Court from the orders refusing said appeals. By assignments of error petitioners complained of the ordinance on the grounds that it abridged said freedoms contrary to the Federal Constitution. (R. 113-4) Within ten days from date of the decrees entered by the Superior Court each petitioner filed his petition for appeal to the Supreme Court, complaining of the ordinance on the grounds that it provided for excessive tax and, as applied, abridged freedoms of speech, press and worship of Almighty God, contrary to the Federal Constitution. R. 126-34.

Each of the courts below held that the federal questions were properly raised and that the ordinance was constitutional and that petitioners had not been denied any federal rights.

Specification of Errors to be Urged

The Superior Court of Pennsylvania committed reversible error in overruling petitioners' assignments of error and in affirming the decree and order of the Quarter Sessions Court of Westmoreland County, refusing appeal from the judgments of the Mayor's Court, because the Superior Court should have held that the ordinance in question, as construed and applied to petitioners, is violative of the United States Constitution in that it abridges and unduly burdens, by taxation, petitioners' rights of freedom of speech, press and worship of ALMIGHTY GOD as by Him commanded in the Scriptures, and according to dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

THIS COURT SHOULD HOLD THAT THE ORDINANCE IS VOID AND UNCONSTITUTIONAL AS CONSTRUED AND APPLIED TO PETITIONERS' ACTIVITY BECAUSE IT ABRIDGES AND UNDULY BURDENS BY TAXATION THE EXERCISE BY PETITIONERS OF THEIR RIGHTS OF FREEDOM OF SPEECH, PRESS AND WORSHIP OF ALMIGHTY GOD, AS HIS MINISTERS PREACHING FROM HOUSE TO HOUSE, CONTRARY TO THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

1

The First and Fourteenth Amendments to the United States Constitution must be very liberally interpreted so as to give effect to the intention of the framers of the instruments and of the people in adopting them; therefore the Court cannot define "religion" so as to exclude petitioners' activity from the protecting shield.

Chief Justice Marshall hung the beacon light for this Court's guidance in his classic words written in *McCulloch* v. *Maryland*, 4 Wheat. 316, 407 (1819): "We must never forget it is a Constitution we are expounding."

This same thought has reverberated through the years in other sound opinions filed in famous constitutional-law cases.[3]

The Constitution of the United States and the amendments thereto were established by and for protection of

[3] *Ex parte Garland*, 4 Wall. 333, 382 (1867); *Hepburn* v. *Griswold*, 8 Wall. 603, 610 (1870); *Adkins* v. *Children's Hospital*, 261 U. S. 525, 544 (1923).

the people of the United States. *League* v. *De Young*, 11 How. 185, 203 (1851).

The framers of the Constitution were not mere dreamers and visionaries, toying with speculations and theories, but were practical men dealing with the facts of life as they understood them from bitter, trying experiences and putting into form the government they were creating, to "establish Justice, insure Domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the *Blessings of Liberty to ourselves and our Posterity.*" The writers of the Constitution and amendments thereto prescribed in language clear and intelligible the powers and limitations of government. *South Carolina* v. *United States*, 199 U. S. 437, 448, 449 (1905); *Pensacola Tel. Co.* v. *Western Union*, 96 U. S. 9 (1878).

In *Prigg* v. *Pennsylvania*, 16 Pet. 539, 610 (1842), the Court, among other things, said:

> "And perhaps, the safest rule of interpretation after all will be found to be to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history; and to give to the words of each just such operation and force, consistent with their legitimate meaning as may fairly secure and attain the ends proposed. . . . If by one mode of interpretation the right must become shadowy and unsubstantial, and without any remedial power adequate to the end; and by another mode it will attain its just end and secure its manifest purpose; it would seem upon principles of reasoning, absolutely irresistible, that the latter ought to prevail."

No court is authorized to construe any clause of the Constitution, particularly the Bill of Rights, so as to *defeat* its obvious ends, when another construction equally in accord with the words and *sense* will enforce and protect the liberties of the people. *Prigg* v. *Pennsylvania*, supra.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; . . ." The Fourteenth Amendment mirrored and made applicable the provisions of the First Amendment against abridgment by the States of the exercise of the fundamental rights of speech, press and worship. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

By these amendments it was intended to allow every person within the United States to entertain such beliefs and indulge in such practices respecting his relations to Almighty God and the duties they imposed as may be approved by the judgment and conscience of the individual provided his fellow men enjoy equal rights uninjured. *Davis* v. *Beason*, 133 U. S. 333, 342.

Davis v. *Beason*, supra, reviews also how oppressive measures were adopted and cruelties and punishments inflicted by the governments of England and continental Europe for many ages to compel individuals to conform to the "recognized" popular, prevailing religious beliefs, or "state religion" of the day. The folly of attempting by law to control all or any persons' mental operations and to enforce an outward conformity to a prescribed standard led to adoption of the First Amendment. Indeed many of the colonial states refused to adopt the Constitution until the First Amendment was proposed, submitted and adopted.

In *Watson* v. *Jones*, 13 Wall. (80 U. S.) 679, 728 (1872), involving the Walnut Street Presbyterian Church of Louisville, Kentucky, this Court held that in this country the full and free right to entertain any belief, to practice any principle and to teach any doctrine which does not violate the law of morality and property and which does not infringe personal rights is conceded to all.

Prior to the now vacated decision of *Jones* v. *Opelika*, supra, this Court had consistently refused to define "reli-

gion" and had left that to the conscience of each individual to determine for himself. This salubrious principle was announced by Thomas Jefferson in the *Virginia Statute for Religious Freedom* (Section 34 of Virginia Code), where, among other things, he said "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or *propagation* of principles on the supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty" and further declared that the only time that the state or government can interfere is when such principles or practices "break out into overt acts against peace and good order." The foregoing statement of Mr. Jefferson is a part of the Virginia Statute and was quoted with approval by this Court in *Reynolds* v. *United States*, 98 U. S. 145, 162 (1879).

The statement of the majority opinion in *Jones* v. *Opelika*, supra—

> "If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. . . . But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid."

—is a plain violation of the principle that it is beyond the power of the courts to judge whether or not a claimed activity is "religious", since that is for the individual alone to determine.

If the courts are permitted to say that a particular practice is *not religious*, nor an act of worship because it does not harmonize with the accepted and recognized mode of practice followed by the "recognized" religions, then that would forever be a permanent limitation upon the modes of worship within the United States. Freedom of worship and of preaching the tenets of one's beliefs, cannot be properly limited by the views of the judiciary or the "recognized" religious clergy, for to do so destroys ad-

vancement and progress. Such would rule off the face of the earth the apostolic way of preaching from house to house, which is the oldest method of preaching the Gospel and the method recognized by Jehovah God.

This Court will take judicial notice of the Census of Religious Bodies in the United States in the year 1936, compiled by the United States Bureau of the Census, which shows that of the total population of the United States of 131,669,275,[1] the membership of all denominations was only 55,807,366. These figures show that more than one half of the people do not belong to any religious organization whatsoever. The religious census shows that a large percentage of the members of such religious organizations do not regularly attend services. Therefore there is great public need and convenience for calling upon the people at their homes and presenting to them literature containing explanation of Bible prophecies. There is no way that such persons not associated with any of the religious organizations can obtain any enlightenment or education on the Bible except it be brought to them at their homes. The sole purpose of Jehovah's witnesses is therefore to enable the people to have home Bible study without having to join any organization or without regularly attending any religious church edifice. These Bible studies are arranged for the convenience of the people, as to time, so as to assure their having the needed vital information pertaining to their eternal welfare as disclosed in revealed prophecies of Jehovah.

The method of preaching by ministers of the Gospel by calling at the homes of the people, even in so-called modern times, has been and is a recognized method. (See the dissenting opinion of Mr. Justice Murphy, *Jones v. Opelika*, supra, under title *Freedom of Religion*, footnotes 13, 16, 18 and 19.) Even the recognized clergyman must call from house to house in order to encourage the increase of his congregation. A minister moving into a locality could not begin a new congregation except by calling from house to

[1] 1940 census shown, as no population census taken in 1936.

house. It seems quite obvious, therefore, that "freedom of religion" and of worship of Almighty God, within the purview of the Constitution, is not limited to a particular place or edifice but extends to all practices, means and methods of communication of ideas and opinion among persons, including the radio, public press, pamphlets, advertising leaflets, word-of-mouth invitation, street distribution and house-to-house calls. If the right and guarantee is in any way limited to a particular practice, then such is the invitation to additional and further restrictions until the right is chiseled away and completely destroyed.

The danger of judicial limitation to the approved and recognized religious practices has been declared by the courts to be a pernicious doctrine that blasts freedom of worship. *Barnette* v. *West Virginia State Board of Education*, 47 F. Supp. 251; *Kansas* v. *Smith and Griggsby*, 155 Kans. 588, 127 P. 2d 518; *Donley* v. *Colorado Springs*, 40 F. Supp. 15. These decisions hold to the fundamental rule that if it were otherwise then freedom of worship and of religion would depend entirely upon the whim, view and complexion of the individual who sat upon the bench and thus the fundamental freedom and right would change with the shifting views of every judge. Such would mean the end of the guaranties incorporated in the Bill of Rights.

It has been universally the rule that the court has no religion, or religious views, because the court is supposed to be indifferent and neutral and to abide strictly by the "separation of church and state" doctrine, as the law "knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson* v. *Jones*, supra.

No one would have the hardihood to suggest that the framers of the Constitution intended to limit the "freedom of religion" mentioned in the First Amendment to any particular practice. On the contrary, the forefathers intended that such term and the liberty guaranteed thereby, would be given the broadest and most liberal construction, for in the various colonies were the Quakers, Catholics and others

who had been persecuted in the British Isles. In the colonies before the Constitution was adopted the Methodists persecuted the Baptists, the Episcopalians persecuted the Rogerines, and all of the various religions suffered in the colonies where they were in the minority. Measures were continually adopted to curtail the minority beliefs and practices. Therefore it is quite plain that the framers did not intend to limit the freedom thus guaranteed, but give it the broadest scope so as to allow the constitutional shield to protect popular and unpopular alike.[5]

This principle is well stated in *Cantwell* v. *Connecticut*, supra, by Mr. Justice Roberts: "The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds." This Court recognized in the *Cantwell* case, supra, that the practice of Jehovah's witnesses in preaching by disseminating printed information from house to house and upon the streets was a practice of worship protected by guaranties of religious freedom in the First Amendment.

"It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen, that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." —*Martin* v. *Hunter*, 1 Wheat. 304, 326.

[5] *Bridges* v. *California*, 314 U. S. 252.

2

The activity of petitioners in distributing literature containing sermons on the Bible is their way of preaching the Gospel and worshiping Almighty God and must be regarded as such by this Court.

Through all the generations of mankind Almighty God Jehovah has had upon earth HIS WITNESSES who have testified before the world as His ministers of and concerning His Kingdom or Government of Righteousness, which He purposes to establish in the earth to bless all people of good will toward Him.

The Bible Book of Hebrews, chapter 11, sets forth the activity and history of many of these witnesses from the beginning of creation down to the time of Christ Jesus when on earth. All such witnesses and ministers consistently refused to compromise with totalitarian governments by obtaining a permit or license, or paying a tax to the state for the privilege of declaring God's judgments and Word as His witnesses and ministers. For this they endured cruel mockings and scourgings, were stoned, sawn asunder, tempted, slain, afflicted and tormented.

Since the persecution and crucifixion of Jesus Christ His ministers have been treated likewise.

All true Christians—witnesses and ministers of Christ—have been commissioned and commanded to preach the Gospel from house to house, from city to city, in villages, in the country places, in the temple, and in meeting places, wherever they have opportunity to talk to the people.—Isaiah 43:9-12; 61:1-3; Matthew 9:35; 10:7, 11-14; 11:1; 24:14; Mark 1:38; 6:6; 13:10; Luke 8:1; 9:60; Acts 2:46, 47; 5:42; 8:4; 20:20, 21; 1 Corinthians 9:16; Revelation 22:17.

The work is carried on in this manner, organized and intensified, because Jehovah's witnesses know that the world events and circumstances that have come to pass prove that

the universal war or 'battle at Armageddon' (Zephaniah 3:8. Revelation 16:16) is speedily approaching and that all mankind must be warned thereof and provided the substantial evidence along with the prophecies in order that those of good will toward Almighty God might find the way of escape through the paths fixed by God's Word, and thereby flee such catastrophe and gain life everlasting in the Kingdom to be established on the earth by Almighty God with Christ Jesus as King.

Petitioners are ordained ministers. A man is not a representative of God because some creature designates him as such. The only way to determine who are ordained of God is to judge them by their works and course of action. Jesus said, "Wherefore by their fruits ye shall know them" and "I do always those things that please [God]". (Matthew 7:20; John 8:29) The apostle James (chapter 2) states that "faith without works is dead" and faith must be proven by obedient action. The commission of Jehovah's witnesses is definitely set forth in the Book of the Prophet Isaiah, chapter 61, verses 1 to 3. It is not necessary for one to go to a theological school to be ordained or set apart for the service of the Most High. The apostles and disciples of Jesus Christ were said to be "unlearned and ignorant men" (Acts 4:13) by the high priest and his house at Jerusalem. While they might be said to be "unlearned" in the "higher learning" of the things of "this world", they were schooled and well-versed in the Word of God itself, and were able to speak and write fluently in the common (Aramaic) not classic (Hebrew) language of their day. So it is today with Jehovah's witnesses, Although unlearned in the sophistry, doctrines and precepts of men and worldly organizations they are schooled and well educated in the Word of the Lord. They are not interested in the classical or "dead" languages of the day, but their one aim is to "preach this gospel of the kingdom."—Matthew 24:14.

Jehovah's witnesses therefore appreciate their responsibility of preaching as stated in Luke 9:60, "Go thou and

preach the kingdom of God." Ezekiel 33:9, 18, states that if Jehovah's witnesses fail thus to preach, then the blood of those who are destroyed at the hands of Jehovah's Executioner in His battle at Armageddon for lack of warning shall be required at the hand of Jehovah's witnesses because of their "sin" of failing to properly warn.

The fact that some of petitioners are unable to engage full time as ministers but must spend part of their time to earn their living through secular trade or calling and not through the work of ministration does not prevent their being properly considered as ministers of the gospel, duly ordained. If such requirements were insisted upon, the disciples of Christ Jesus were not qualified to be His ministers. All of them had some secular callings; none of them were graduates of theological seminaries. Paul was educated as a lawyer. The others were fishermen and "unlearned men". Even Christ Jesus was a carpenter.

Secular vocations of some petitioners do not negative their fitness to preach the Gospel of the Kingdom nor prevent them from being considered entitled to legal recognition as ministers. *In re Cain*, 39 Ala. 440, 441, holds "that a minister of religion includes a minister belonging to a sect of religionists who perform ministerial labor gratuitously and rely on secular employment as a means of subsistence." Thousands of urban ministers enjoy large incomes from their ministry while many more thousands of rural ministers of the "recognized" religions are forced to engage in farming and other occupations during the week so as to preach in the pulpit of the country church on Sunday.

Jehovah's witnesses operate in a lawful and proper manner and use the Watch Tower Bible & Tract Society and Watchtower Bible & Tract Society, Inc., legal corporations, chartered under the charitable, religious and educational laws of Pennsylvania and New York, which instrumentalities are used to carry on the preaching of the gospel throughout all parts of the earth. These societies are used

to operate schools for the purpose of educating and training of ministers of the gospel to appreciate the responsibility of gaining knowledge in the Word of God to enable them to tell others of their responsibilities.

Making of public speeches in religious edifices can be said to be a proper and recognized way of preaching. In addition to meeting in halls and public meeting places and in the homes of the people for study, the apostolic way of calling at the homes and establishing Bible studies is the scriptural and most effective way of preaching the gospel and reaches all the people. The bound books, magazines, pamphlets and Bibles distributed by Jehovah's witnesses in this manner is for the convenience of the people in enabling them to have a permanent guide to study the Bible at their convenience. The literature is a substitute, therefore, for the oral word and saves the time of the preacher distributing the same, as well as the person called upon.

The *way* of worshiping Almighty God, as done by petitioners, being a manner set out by Scriptural mandate, therefore cannot be said by this Court or any other court to be not a proper mode of worship.[6] "Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."—Romans 14:4.

There can be no question but that the activity of petitioners must be recognized by this Court as standing on the same level, for the purposes of protection under the Bill of Rights, with the methods of the recognized clergy, whose primary preaching activities consist of speaking from the pulpit.

[6] *Reynolds v. United States*, 98 U. S. 145, 162; Blackstone, *Commentaries* (Chase 3d ed., pp. 5-7); Cooley, *Constitutional Limitations*, 8th ed., p. 968.

3

The record conclusively establishes that petitioners were not selling literature in the sense that ordinary merchandise is sold, but that money contributions simultaneously received were used toward petitioners' activity, which is charitable and from which there is no commercial gain.

The evidence shows that of the petitioners, the one whose full time is devoted to the activity, carries on at a financial loss. The monthly deficit must be made up from a source other than receipts from placement of literature with the public. More than half the literature is given away to the poor and others who were unable to contribute. Often contributions are received of less than the cost of manufacturing and distributing the literature, and the distributor very rarely receives as a contribution the full amount fixed by Jehovah's witnesses. The part-time workers likewise give away most of the literature to the people and operate at a loss. The record shows conclusively that the work is benevolent and charitable and not commercial. If it were commercial work the literature would never be given away nor would the receiver be allowed to contribute any sum he desired when receiving the literature. The receiver would be required to pay a fixed price or else not receive the literature, if the work were commercial.

The contributions thus received by Jehovah's witnesses are identical to the "free-will" offerings received by the clergyman when *his* contribution plate is passed. No reasonable person would contend that the hearer "bought" or "purchased" a sermon when thus contributing to the preacher; nor can it be contended that anyone "bought" the *printed* sermons distributed by petitioners. They did not *sell* as that term is understood in commercial transactions. A commercial business could not last long if operated on

the principles or by the methods employed by Jehovah's witnesses. The reason Jehovah's witnesses carry on as they do in spite of the loss to them financially is because their entire life is devoted to Jehovah God and the declaration of His kingdom gospel. Each has pledged *his* all to see that the people receive God's Word concerning the complete establishment of God's kingdom in the near future. Each considers it a privilege to devote his time and money in bringing the message to the people, even if it costs him his life or liberty; therefore, financial loss is a small thing compared to the other hardships they are willing to endure for the name of the Lord Jesus Christ. Jehovah's witnesses themselves keep the deficit suffered in their operations made up by voluntary contributions *themselves* and do not depend upon someone on the *outside* to bear their burdens. Therefore their work is entirely charitable and it cannot be honestly or fairly contended to be commercial. The record does not support a conclusion that the transactions are commercial or money-making.

As part of this argument we refer to "Statement of Facts", pages 7 to 12, supra. There is absolutely no evidence to show that petitioners profited or gained from a selfish commercial or material standpoint through any contributions. The money contributed was only a small part of the expense of operations. The entire work was done at a loss to petitioners as the evidence shows. The money contribution only partially defrayed the expense. The greater number of books, booklets and magazines were given away free of charge to the poor and needy. The fixed amount of twenty-five cents to be contributed by one receiving the bound book is for the sole purpose of preventing excessive contributions from being received or asked for, and to make the work of Jehovah's witnesses uniform. There is no rule prohibiting the distribution of books to persons unable to contribute the fixed amount of twenty-five cents, although there is a rule that forbids distributors from asking more than such fixed amount. The fact that

one contributed twenty-five cents and stated that he "bought" the book, or thought he was buying it, or that it was "sold" to him, does not change the charitable nature of the preaching activity and does not make it commercial any more than does the act of a person in a religious edifice putting twenty-five cents in the contribution plate make the sermon or the preaching in the edifice commercial. Many religious organizations tithe their members and fix definite assessments against the members for the upkeep of the building and the minister. No one would have the audacity to contend that because those religious organizations assessed a fixed amount to be paid by members of their congregations such activity is commercial or that such fixed amounts would subject the preacher to a tax for preaching, or that the constitutional protection and guaranty of freedom of worship would be removed because amounts required by the fixed assessments had been accepted by such organizations.

Therefore it is plain that there is no distinction between charitable preaching activity of petitioners and the method of obtaining contributions by the "recognized" religious clergy. Petitioners give literature not upon condition of advance payment, or any payment, but permit the people to contribute any sum they choose not to exceed twenty-five cents when receiving any volume.

It is not contended that Jehovah's witnesses (petitioners) refused to deliver the literature to any person for want of money contribution. The record discloses that many volumes were given away free of charge. The petitioners contributed their own money earned in the sweat of their brow at secular occupations, or which they received from other sources, to carry on their ministerial work. Their taking of money contributions is not the primary aim, but is incidental to the main activity of preaching.

4

Many state courts have rightly held that the preaching of Jehovah's witnesses is not commercial and cannot be classed as selling, hawking, vending or peddling.

Throughout the entire United States during the past several years this type of license tax ordinance and similar laws have been applied to the activity of Jehovah's witnesses. Many convictions have been appealed to the higher courts and such courts of various states have held consistently that the duty falls upon such courts to construe such commercial laws so as to exclude the non-commercial preaching activity of Jehovah's witnesses. This the courts have done in spite of the fact that the evidence clearly showed that money contributions were received and that the complaining witnesses in many cases testified that they "bought" literature from Jehovah's witnesses involved and that Jehovah's witnesses were "selling" literature.

Most recent is the case of *People* v. *Barber*, decided January 7, 1943 by the New York Court of Appeals, reported in 289 N. Y. 378, 46 N. E. 2d 329. See also *People* v. *Gage*, 28 N. Y. S. 2d 817; *Cincinnati* v. *Mosier*, 61 Ohio App. 81, 22 N. E. 2d 418; *Semansky* v. *Stark*, 196 La. 307, 199 S. 129; *Shreveport* v. *Teague*, 8 S. 2d 640; *State* v. *Meredith*, 197 S. C. 351, 15 S. E. 2d 678; *Thomas* v. *Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 598; *State* v. *Richardson*, 27 A. 2d 94; *State* v. *Mead*, 230 Iowa 1217, 300 N. W. 523; *Wilson* v. *Russell*, 146 Fla. 539, 1 S. 2d 569; *Hough* v. *Woodruff*, 147 Fla. 200, 2 S. 2d 577.

See also treatment of an analogous question in *Donley* v. *Colorado Springs*, supra. Even in England, where legislative bodies, though restrained by the traditions and principles embodied in the Bill of Rights, exercise a power not subject to constitutional limitation, a similar legislative

decree has received similar construction. (*Gregg* v. *Smith*, 12 Eng. Rul. Cases 501 [Q. B. 1873].)

Although the state courts, in these cases, held that the activity was not prohibited by the ordinances, nevertheless the courts reached this conclusion because of the non-commercial, charitable and preaching activity of Jehovah's witnesses. These findings of fact and conclusions should be persuasive that this Court should reach a similar conclusion.

While this Court cannot say that the ordinance should be construed to exempt petitioners' activity, for that is solely for the state court to determine, nevertheless this Court can say that the activity in question is exempt under the Bill of Rights of the Federal Constitution from the encroachment attempted by the application of the ordinance.

5

The record conclusively shows that in addition to preaching the Gospel under the guaranties of freedom of worship petitioners are engaged in press activity through dissemination of printed information and opinion.

It is conceded by respondent that the subject matter of the literature does not relate to any commercial, selfish purpose and does not pertain to the advertisement of ordinary articles of merchandise. An examination of the literature shows that it relates exclusively to the explanation of Bible prophecies and, in brief, that the literature contains printed sermons on Bible subjects. The theme of the literature is charitable and presents a message of comfort and hope for the people through an understanding of God's purposes to establish in the earth a Government of Righteousness that follows His impending 'battle at Armageddon' which will result in the destruction of all those who do not take their stand on the side of God's Kingdom.—Daniel 2:44; Isaiah

32:1, 16-18; Psalm 72:1; 4, 7, 8; 67:6, 7; 145:13, 16; Isaiah 25:6-8; 11:6-9; Zephaniah 2:3; Isaiah 65:20-23; John 5:27-29; 2 Peter 3:13; Revelation 21:1, 4; Proverbs 2:21, 22; 10:30; 29:2.

The literature thus distributed pertains to information and opinion and is of that character protected by the First and Fourteenth Amendments, providing for the guarantee of freedom of press. This same literature has been recognized by this Court as entitled to the protection of freedom of the press in the cases of *Lovell* v. *Griffin*, supra, and *Schneider* v. *State*, supra.

In *Lovell* v. *Griffin*, supra, this Court said: "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near* v. *Minnesota*, supra; *Grosjean* v. *American Press Company*, supra; *De Jonge* v. *Oregon*, supra."

In that *Lovell* case the Court also held that freedom of the press included distribution as well as printing.

In *Ex parte Jackson*, 96 U. S. 727, 733, this Court said: "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value."

There can be no question, therefore, but that the activity of petitioners is *press activity* and that the distribution of the printed information and opinion by them is protected by the freedom of press provision of the First Amendment, which is made applicable against the states in the Fourteenth Amendment.

6

This Court has held that "at the homes of the people" and "the streets" are proper and appropriate places for the dissemination of information and opinion and mere conveniences of the public and state are not sufficient grounds to abridge the exercise of the right.

In the case of *Hague* v. *C. I. O.*, 307 U. S. 496, this Court held that the streets and parks have been immemorially used by the public for purposes of assembly, communication of thoughts by the citizens and discussion of public questions. In *Valentine* v. *Chrestensen*, 316 U. S. 52, the Court said:

> "This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares."

In *Schneider* v. *State*, supra, this Court said:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.[7] The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

[7] *Grosjean* v. *American Press Co.*, *supra*, p. 244; *De Jonge* v. *Oregon*, *supra*, [299 U. S. 353] p. 364; *Lovell* v. *City of Griffin*, *supra*, p. 450.

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights. . . .

" . . . We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. . . .

" . . . As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution. . . .

" . . . But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place. . . .

"As said in *Lovell* v. *City of Griffin, supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the *most ef-*

fective way of bringing them to the notice of individuals is their distribution *at the homes of the people*. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees." [Italics added]

The Superior Court of Pennsylvania, by the construction placed on a similar ordinance in the case of *Commonwealth* v. *Reid*, 144 Pa. S. C. 569, 20 A. 2d 841, confines the right of freedom of the press and of worship to the public streets. The respondent, in the enforcement of the ordinance here, has not arrested petitioners in their use of the public streets in carrying on their ministerial activities, but only in doing this from house to house, on the grounds that freedom of the press, speech and worship does not permit one so engaged to call from house to house. The erroneous view of the Superior Court is expressed in the case of *Pittsburgh* v. *Ruffner*, supra, where that court said: "This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place."

The question of the right of the householder to keep off of his premises unwanted persons who call from house to house is not involved in this case. There is no contention that anyone objected to the presence of petitioners or that petitioners refused to leave when invited to do so. Furthermore the ordinance does not purport to punish any such abuses.

The undisputed evidence shows that the petitioners were exercising their rights in a proper and appropriate place within the meaning of the Bill of Rights.

7

The constitutional guarantees are not limited to persons disseminating information and opinion free of charge, but extend to persons receiving money contributions while so doing and to persons selling literature, and also to *commercial sales of literature* by those engaged therein for profit.

In *Commonwealth* v. *Reid*, supra, Judge Keller, speaking for the Superior Court said:

> "The historical reference to 'pamphlets' in that [Lovell v. City of Griffin, supra] opinion and in other opinions of that Court (Schneider v. State (Town of Irvington), supra, p. 164; Thornhill v. Alabama, 310 U. S. 88, 97; Grosjean v. American Press Co., 297 U. S. 233, 245-250, etc.) *is not limited to 'pamphlets' which are distributed without cost.* Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated gratis, but were distributed to subscribers or sold." [Italics added]

In *Hannan* v. *Haverhill*, 120 F. 2d 87, "We take it also that this constitutional right . . . is not limited to handing it out free of charge, but includes also the right to offer the literature for sale so as to defray the cost of publication —otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would tend to become a prerogative of the well-to-do."[5]

The guarantee of freedom of the press extending to dissemination of information and opinion and the guarantee of freedom to worship Almighty God extending to preaching the gospel from house to house are not limited to those

[5] Identical holdings in *Blue Island* v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 515, and *State* v. *Greaves*, 112 Vt. 222, 22 A. 2d 487.

who engage in such activities only as long as they do not accept money contributions to aid in the carrying on of such work. Freedom of the press does not mean freedom so long as printed information and opinion is given away free of charge. The taking of money does not remove the constitutional protection. Any claim that constitutional protection is removed because money is received at once destroys the Bill of Rights.

Everyone knows that the *Pennsylvania Gazette*, edited by Benjamin Franklin, and his more famous *Poor Richard's Almanack* were *sold*. See "Newspapers", *Encyclopedia Americana*, *Encyclopædia Britannica* and *Columbia Encyclopedia*, and "Pamphlets", *Encyclopædia Britannica*.[9]

Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received by each distributor. The newspaper industry is a profitable one and many have grown wealthy through it. Its sponsors are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. Those that are doing good, such as petitioners here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through *press activity* likewise are entitled to let desirous receivers of the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. If such a theory be sustained, then the receipt of money for a piece of literature would allow censorship taxation,

[9] See also books by J. D. Symon, *The Press and Its Story*; J. M. Lee, *The History of American Journalism*; E. C. Cook, *Literary Influences in Colonial Newspapers*; I. J. S. Given, *The Making of a Newspaper*; S. Bent, *Ballyhoo*; W. B. Graves, *Readings in Public Opinion*; Walter Lippman, *Liberty and the News* and *The Phantom Public*; Upton Sinclair, *The Brass Check*; E. P. and F. Harris, *The Community Newspaper*; J. L. Woodward, *Foreign News in American Newspapers*; Stanley Walker, *City Editor*.

prohibition and every other sort of abridgment. Certainly the founding fathers did not intend so to limit the freedom. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of the press in America. Acceptance of money by petitioners is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

To give the Bill of Rights the construction asked for by respondent would mean the strangling of the fundamental freedoms to the point of death and make the Constitution a meaningless, empty and impotent document.

8

Limitations applicable to selling of ordinary articles of merchandise so as to allow application of ordinances of the kind in question do not permit an extension to include distribution of literature and simultaneous receipt of money.

This Court held in *Schneider* v. *State*, supra, that legislative preferences and beliefs may well support regulation directed at "other personal activities" but that such would not be adequate and would not justify an application thereof to "the exercise of rights so vital to the maintenance of democratic institutions." In the case of *Hannan* v. *Haverhill*, supra, involving an ordinance of the same type as the Jeannette ordinance, it was said: "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs [Jehovah's witnesses]."

It seems plain therefore that regulations and ordinances providing for fees and taxation of peddlers, hawkers and vendors of ordinary articles of merchandise, such as shoe laces, bananas, framed pictures, cosmetics, canary birds, etc., cannot be constitutionally sustained against the exer-

cise of freedom of the press, even though it be contended that there was a *sale* of literature, whether printed or otherwise recorded.

9

The legislative enactments providing for taxation, regulation or prohibition of any activities are not presumed to be constitutional when applied to exercise of fundamental personal rights, because the legislative declarations are not supreme when confronted with the Bill of Rights.

This Court held, in *Schneider* v. *State*, supra, that legislative preferences respecting matters of public convenience supporting application thereof to "other personal activities" would not justify application thereof to the four freedoms protected by the Bill of Rights and the Fourteenth Amendment. In the case of *Herndon* v. *Lowry*, 301 U. S. 242, this Court said, "The power of a state to abridge freedom of speech . . . [press and worship of Almighty God] is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state."

In *United States* v. *Carolene Prodyets Co.*, 304 U. S. 144, 152, Chief Justice Stone, speaking for the Court, said:

> "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See Stromberg v. California, 283 U. S. 359, 369-370; Lovell v. Griffin, 303 U. S. 444, 452.

> "It is unnecessary to . . . enquire . . . whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

If it be held that the presumption of validity of legislation is supreme, then all sorts of unconstitutional laws directly and indirectly circumventing the injunctions of the Constitution and the Bill of Rights would be permitted and make inoperative and void the strong provisions of the Bill of Rights. It would take from the judicial and executive branches all power and authority and invest it in the legislative branch of the government and the administration of justice would become an idle ceremony.

Surely this Court will not uphold such an alien and pernicious principle and doctrine.

10

Authors of the First Amendment did not intend to limit abridgments of the fundamental rights protected to particular form of encroachment, but intended that all kinds of abridgments, including taxation of any kind, should be denied.

In the now vacated opinion in *Jones* v. *Opelika*, supra, a startling statement was made by Mr. Justice Reed:

> **"It is prohibition and unjustifiable abridgment which is interdicted, not taxation."**

Every school child knows that the forefathers fought valiantly until they cast off and out from this land the favorite yoke of oppression, known as the "stamp taxes".

The "stamp tax" was *taxation*. This method of abuse and prohibition of the freedom of the press was without question of doubt more clear in the minds of the framers of the First Amendment than any other sort of encroachment.

Mr. Justice Murphy, in *Thornhill* v. *Alabama*, 310 U. S. 88, said, "The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times."[10]

It was the favorite and best known means of oppression at the time of the American Revolution. For historical discussion of these oppressive taxes, see *Grosjean* v. *American Press Company*, supra; *Near* v. *Minnesota*, 283 U. S. 697, 707-716.[11] See also Motion for Rehearing in *Jones* v. *Opelika*, etc., Nos. 280, 314 and 966, Oct. Term 1942, pages 20 to 26, inclusive.

The term "abridge" as here used in the First Amendment means "to shorten, curtail or reduce" and comes from the same root word as "abbreviate". It does *not* mean destroy, forbid, prohibit, prevent.

It cannot be contended that the license tax is not included within the prohibition of the First Amendment. The license tax is more pernicious than the ancient stamp tax because it is an arbitrary tax providing for a blanket amount which must be paid as a condition precedent to the

[10] See Duniway, *The Development of Freedom of the Press in Massachusetts*, p. 123 *et seq.*; Tyler, *Literary History of the American Revolution*; 2 Bancroft, *History of the United States*, p. 261; Schofield, *Freedom of the Press in the United States* (1914), 9 Proc. Am. Social. Soc. 67, 76, 80. See argument Point 1, supra, pages 15 to 21.

[11] See W. G. Bleyer, *The History of American Journalism*, 1927 ed. 1129; G. J. Patterson, *Free Speech and a Free Press*, 1939 ed.; W. M. Clyde, *The Struggle for the Freedom of the Press from Caxton to Cromwell*, 1934 ed.; C. D. Collet, *History of Taxes on Knowledge*, 1899 ed.; Ford, *Pamphlets on the Constitution of the United States, 1787-1788*, pp. 113, 156-157, 316 (1888); *Pennsylvania and the Federal Constitution* (McMaster and Stone, Eds.), pp. 180, 181, 576 ff. (1888); Stevens, *Sources of the Constitution of the United States*, pp. 213, 218, 221 (1894).

exercise of the right and does not depend upon income or profit of the individual or the amount of business carried on in the city. It does not make allowance for those engaged in charitable activity where most of the items are delivered free of charge. The amount of the tax is not dependent upon the number of pieces of literature distributed among persons from whom contributions are received. No provision is made for any reduction in amount of tax on account of the number of pieces given away free of charge. The license tax is therefore the worst kind of burden or abridgment.

In *Grosjean v. American Press Co.*, supra, the Louisiana Legislature imposed a license tax on the owners of *commercial* newspapers for the privilege of *selling* and charging for commercial advertisements and measured the amount of the tax by a percentage of the gross receipts from such *commercial advertisements*. That case is directly in point with the license tax in this case and the opinion of Justice Sutherland is here quoted from:

> "The tax imposed is designated a 'license tax for the privilege of engaging in such business', that is to say the business of selling, or making any charge for [commercial] advertising. . . . The framers of the First Amendment were familiar with the English struggle, which then had continued for nearly eighty years, at the end of which time it culminated in a lasting abandonment of the obnoxious taxes. The framers were likewise familiar with the then recent Massachusetts episode; and while that occurrence did much to bring about the adoption of the amendment (see *Pennsylvania and the Federal Constitution*, 1888, p. 181), the predominant influence must have come from the English experience. It is impossible to concede that by the words 'freedom of the press' the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom con-

sisted only in immunity from previous censorship; for this abuse had then permanently disappeared from English practice. *It is equally impossible to believe that it was not intended to bring within the reach of these words such modes of restraint as were embodied in the two forms of taxation already described.* . . . In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting *any form of previous restraint upon printed* publications, or their *circulation*, including that which had theretofore been effected by these two well known and odious methods.

"This Court had occasion in *Near* v. *Minnesota*, supra, . . . and the Court was careful *not* to limit the protection of the right to any particular way of abridging it. . . .

"Judge Cooley has laid down the test to be applied —'The evils to be prevented were not the censorship of the press merely, but *any action* of the government by means of which it might prevent such *free* and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.'" [Italics added] 2 Cooley's *Constitutional Limitations*, 8th ed., p. 886.[12]

[12] "The First Amendment to the Constitution further provides that Congress shall make no law abridging the freedom of speech or of the press. What is first noticeable in this provision is that it undertakes to give no rights, but it recognizes the rights mentioned as something known, understood, and existing; and it forbids any law of Congress that shall abridge them. . . .

"It seems more than probable, however, that the constitutional freedom of the press was intended to mean something more than mere exemption from censorship in advance of publication. Such censorship had never been general in the Colonies; it did not exist at all at the time of the

[*continued on next page*]

It seems plain that if the Bill of Rights is interpreted in the light of and with the aid of contemporary history at the time that the Amendment was written so as to give effect to the actual intention of the framers thereof, the license tax must be declared invalid as one of the abridgements clearly prohibited by the First Amendment. The guarantee of immunity contained in the Bill of Rights places press, speech and worship in favored positions because of special contributions they make to public welfare (*United States ex rel. Milwaukee Social Democratic Pub. Co.* v. *Burleson*, 255 U. S. 407, 410) and every conceivable form of abridgment thereof was intended to be prohibited.

This Court in *Bridges* v. *California*, supra, in discussing these and other relevant issues, said (at page 265) that "the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

The need of the government for revenue does not weaken

[*concluded from preceding page*]

Revolution, and there was no apparent danger of its ever being restored. To forbid it, therefore, and especially just at a time when the people had been taking a larger share in the government into their own hands, and when the command would be laid on their own representatives, would appear to savor somewhat of idle ceremony. . . . and the evils they feared had no necessary connection with any established or threatened censorship. Nor could any valuable purpose be accomplished by introducing in the Constitution a provision which should forbid merely a previous supervision of intended publications, if the law might be so made, or so administered, as to inflict punishment for publications which might be not only innocent, but commendable.

" . . . *It is a just conclusion, therefore, that this freedom of public discussion was meant to be fully preserved; and that the prohibition of laws impairing it was aimed*, not merely at a censorship of the press, but *more particularly at any restrictive laws or administration of law, whereby such free and general discussion of public interests and affairs as had become customary in America should be so abridged as to deprive it of its advantages as an aid to the people in exercising intelligently their privileges as citizens, and in protecting their liberties.*" [Italics added] *Principles of Constitutional Law*, Cooley (Student's Series, compiled by Andrew C. McLaughlin, 1898, printed by University Press), Chapter XIV, Section V, pp. 299-301; see also Cooley's *Constitutional Limitations*.

the constitutional immunity so as to allow taxation in any form. The fact that it is called a "license tax" does not save it. Whether it is called a "license tax", "business tax", "occupation tax", "privilege tax" or any other kind of tax, if the taxation or the money exaction falls directly on the act of circulation, it is unconstitutional abridgment of the liberty of circulation. Circulation, *distribution*, is the life of the press. The greater the number of distributors, the greater the tax; the greater the tax, the greater the burden.

The forefathers did not intend that the government should depend for its support upon taxation of the privileges and rights guaranteed by the Bill of Rights, which the government was established to protect. To sustain a tax which burdens the exercise of a constitutional right (whether that be distribution of pamphlets or any other printed information, or a tax upon each printing press) is like shackling the cherished freedoms of press, speech and worship and abandoning them in the path of onrushing mechanized monsters. It seems that the government—municipal, state and federal—should be strong enough to protect itself by confining its taxing activities to the ordinary legitimate form of exactions without resorting to taxation of liberties of the people secured by the Bill of Rights, which all governing servants—judicial or otherwise—are sworn to protect.

In *McCulloch* v. *Maryland*, supra, it is said: "The power to tax is the power to destroy." That destruction is a grim and appalling reality in the instant case.

We submit that this entire question of the tax being an unconstitutional burden upon rights guaranteed by the Bill of Rights can be disposed of on this single, lone milestone of constitutional law and history: the case of *McCulloch* v. *Maryland*, supra. There it was a tax upon property of the federal bank. The Constitution did not specifically prohibit taxation on banks but the court construed it to be a burden. For the same reasons that the Constitution does not allow such a burden on such instrumentalities of the

sovereign "people of the United States" it does not allow a burden upon the people's civil rights guaranteed more specifically by the first amendment. In that case Mr. Chief Justice Marshall said:

"... No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. ...

"But, such is the paramount character of the constitution, that its capacity to withdraw any subject from the action of even this power, is admitted. ... If the obligation of this prohibition must be conceded—if it may restrain a State from the exercise of its taxing power on imports and exports; the same paramount character would seem to restrain, as it certainly may restrain, a State from such other exercise of this power, as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. ...

"That the power of taxing it [Bank of the United States] by the States may be exercised so as to destroy it, is too obvious to be denied. ... But the very terms of this argument admit that the sovereignty of the State, in the article of taxation itself, is subordinate to, and may be controlled by, the constitution of the United States. ...

"... We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. *The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power, which the people of a single State cannot give.* [Italics added]

"We find, then, on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers. The right never existed, and the question whether it has been surrendered, cannot arise. ...

"... The question is, in truth, a question of supremacy;

and if the right of the States to tax the means employed by the general government be conceded, the declaration that the constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declaration. . . . .

"The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

"We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void."[13] [Boldface added]

The analogy is clear when the freedoms named in the First Amendment are substituted for the agencies of the federal government referred to in that opinion.

This Court can well consider, in this connection, a profound expression made by Mr. Justice Sutherland, dissenting, in *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 141: "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

[13] "A case could not be selected from the decisions of the Supreme Court of the United States, superior to this one of *McCulloch* v. *Maryland*, for the clear and satisfactory manner in which the supremacy of the laws of the Union have been maintained by the court, and an undue assertion of State power overruled and defeated."—*Kent's Commentaries, I.*, 428.

11

Misconception attributable to dictum of this Court and per curiam opinions relied upon to extend the license tax and other taxation upon exercise of constitutional rights needs clarification by discussion of this Court.

In *Associated Press* v. *N. L. R. B.*, supra (at page 132), it is said that "The publisher of a newspaper . . . like others . . . must pay equitable and non-discriminatory taxes on his business." Those engaged in *press activity*, such as the newspapers and other publishers, are not exempt from ordinary forms of taxation. They are required to pay various types of taxes, federal and state, including net income taxes, capital stock taxes, social security taxes, corporate franchise taxes, real and personal property taxes and unemployment compensation taxes. All these are the ordinary form of taxation. But because the public press can be required to pay ordinary forms of taxation, one could not argue and successfully contend that such newspapers and publishers could be required to pay a license tax upon their business, the distribution of their literature or the printing thereof. None of the ordinary forms of taxation, distinguished from the license taxes, have a prohibitory or censorial quality and none of such operate as conditions precedent to the publication and circulation of literature.

Therefore this Court should reconsider and clarify the effect of its per curiam memorandum decision in *Giragi* v. *Moore*, 301 U. S. 670, which is here contended to be an erroneous statement of the law. In that case the State of Arizona levied a tax of 1 percent on the gross receipts of newspaper publishing business and required every person engaged in such business to obtain a license and account for and pay the license tax. In that case the Federal question was raised for the first time on motion for rehearing before the Supreme Court of Arizona. The record, therefore, did not

present a properly raised Federal question when appeal was dismissed by this Court. The case was disposed of on the jurisdictional statement and the per curiam decision was not accompanied by an opinion explaining the relation between *Grosjean* v. *American Press Co.*, supra, and *Associated Press* v. *N. L. R. B.*, supra, to the issue involved.

What has been here said regarding *Giragi* v. *Moore*, supra, also applies to *Arizona Publishing Co.* v. *O'Neil*, 304 U. S. 543, where this Court, on appeal, affirmed the judgment of the United States District Court for the District of Arizona upholding the same tax statute as was involved in *Giragi* v. *Moore*, supra. License tax in the Arizona cases is very similar to that declared unconstitutional in *Grosjean* v. *American Press Co.*, supra.

The statement in the now vacated majority opinion in *Jones* v. *Opelika*, supra, that—

> **"The Constitution draws no line between a payment from gross receipts or a net income tax and a suitably calculated occupational license."**

—is irrelevant, immaterial and very misleading. The Court has not hesitated to strike down taxes on various grounds, though the Constitution says nothing about them at all. This Court has also declared invalid a state tax on federal instrumentalities and federal taxes on state instrumentalities, although there is no specific language in the Constitution which requires that result.

The cases of *Giragi* v. *Moore*, supra, and *Arizona Pub. Co.* v. *O'Neil*, supra, are in conflict with *McGoldrick* v. *Berwind-White Coal Co.*, 309 U. S. 33, 45, holding that there is a difference between gross income taxes and net income taxes. It is the effect of the tax which determines the validity under the Constitution and if the same directly burdens the privileges of freedom of speech, press and worship, guaranteed and secured by the Constitution, they must be declared invalid.

12

The license tax provided for by the ordinance here is a revenue raising measure exclusively and not a regulatory fee to provide expense of administering the regulation.

The Superior Court of Pennsylvania describes the license tax provided for in the ordinance as being a revenue-raising measure. That Court says: "It is within the express grant of municipal power and authority contained in the Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, sec. 2601, and its amendments, 53 PS ss. 2198-2601, and the prior acts regulating third class cities and boroughs."

An examination of these statutes discloses the following: "License Taxes for Revenue Purposes." Among other things it says: "The *taxes* assessed under this section shall be in addition to all other taxes. . . ."

It cannot be said, therefore, that the license tax here is regulatory, for it is not such in character, name or operation.

It is noticed that the majority opinion of June 8, 1942 in *Jones* v. *Opelika*, supra, repeatedly referred to license taxes provided by the cities of Opelika, Casa Grande and Fort Smith as "fees". This was a mistake on the part of the majority and was contrary to the construction placed upon the ordinances in those cases by the state courts. An examination of the opinion in those cases, as well as the statutes authorizing the ordinances, discloses that they were revenue-raising measures exclusively and were regarded as such by the parties to the cases. It is beyond the authority of this Court to construe a statute or ordinance and this Court is specifically prohibited from attributing to a statute or ordinance a characteristic not given it by the state court or contrary to the characteristic described by the state court.

The ordinance in question is not regulatory because the

issuance of the license does not relate to the time, place or manner of distribution. Once a person receives the license prescribed, he is free to "peddle" at any time, at any place and in any manner without interference from the licensing authority.

The license tax is not a fee for policing because there is no provision in the law for the policing of distributors of literature. The distribution of literature is not claimed by the ordinance to throw an added police expense or burden upon the city. A person exercising his constitutional rights in distributing literature from house to house can no more be required to contribute toward additional police expense by payment of a special use license than could a person lawfully using the streets and sidewalks for any lawful purpose.

The expense of operating a municipality must be provided through properly raised taxes of a general nature. The exercise of constitutional rights should not be taxed to support the municipal, state or federal government because if this were permitted, the government would become dominant as against the Constitution and the people themselves.

Cox v. *New Hampshire*, 312 U. S. 569, is not in point here because what was there involved was a regulatory fee to meet the expense incident to administration of the law and to provide police protection and attendance at parades upon the streets. The fee there was not a revenue-raising tax but was entirely regulatory. The tax here is not contended to be a fee for policing or licensing but is revenue raising exclusively.

13

It is not permissible to attack a license tax exacted under revenue-raising laws as being excessive, confiscatory and unduly burdensome to the point of destruction and prohibition.

It has always been the universal rule of this Court that when a tax is found to be proper and constitutional upon a given activity such tax cannot be attacked as a "substantial clog" or excessive. Once it is decided that a license tax can be imposed upon the right to print, publish, circulate or distribute printed matter or to preach the gospel, as did Christ Jesus and His apostles, then there is no limit to this power of taxation and complete control, suppression, and prohibition. Destruction of the four freedoms can readily result.

Prior decisions of this Court have repeatedly pointed out that when a subject matter is brought under the taxing power of the federal, state or municipal government, the amount—regardless of how destructive or prohibitive it may be—cannot be questioned by the judiciary. There is no limit to its exercise within the discretion of the government, state or city. The oppressiveness of the burden cannot interdict the taxation. *Magnano Co.* v. *Hamilton*, 292 U. S. 40; *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550.

In *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548, the validity of an increased tax on the circulating notes of persons and state banks was questioned as excessive. The court refused to consider the question and said: "The first answer to this is that the judiciary cannot prescribe to the legislative departments of the government limitations upon its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a

corporation or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution." See also "Child Labor Tax Case", 259 U. S. 20, 41; *McCray* v. *United States*, 195 U. S. 27; *Spencer* v. *Merchant*, 125 U. S. 345; *Flint* v. *Stone Tracy Co.*, 220 U. S. 107.

If the cities and states can require a license as a condition precedent to the circulation and distribution of information and opinion, it can impose an identical license upon those engaged in the newspaper publishing business. It can then impose heavy fines and penalties for non-payment of the tax and enjoin publication and distribution until it is paid. The amount can be increased to such an extent that distributors, pamphleteers, and publishers of newspapers and other periodicals can be limited materially or prohibited.

The fact that thousands of villages, towns and cities have license tax laws against "peddlers" clearly shows that increased and nation-wide distribution of literature would suffer a tremendous burden and if unable to pay the prohibitory license fees charged, would be compelled to stop distribution or else suffer severe punishment. In many instances the taxes would exceed the gross contributions received by Jehovah's witnesses. The towns most likely to enforce such license tax laws are the small towns and rural areas where the principal field of house-to-house apostolic preaching is conducted. As an example of the tremendous burden thrown upon such distributors of lit-

erature we set out in a footnote a list of a few of the towns and the license tax required by each.[14]

It is manifest that in a great number of towns deficits will arise, especially with reference to those persons who engage in the activity only part time, such as one day per week. If the number of municipalities exacting these taxes or fees increased, the deficits will continually increase and thus distribution be entirely prohibited.

The so-called "enlarged field of distribution" mentioned by the majority opinion of June 8, 1942 in *Jones* v. *Opelika*, supra, is wholly imaginary and illusory and will itself result in a cumulative increase in the financial burden to the extent of destruction of the activity. While these taxes might be properly enforced as to peddlers of ordinary

[14]

STATE	CITY	POPULATION	LICENSE FEE
Arizona	Buckeye	1,077	$10 per quarter
	Casa Grande	1,351	$25 per quarter
	Douglas	8,623	$25 per annum
	Duncan	1,050	$10 per annum
	Flagstaff	5,080	$5 per day
	Nogales	5,135	$50 per day
	Prescott	6,018	$10 per month
	Safford	1,706	$10 per annum
	Wickenburg	734	$200 per annum
	Willcox	806	$2 per day
	Winslow	4,577	$5 per day
	Yuma	5,325	$5 per day
California	El Cerrito	6,137	$10 per quarter
	Roseville	6,653	$5 per month
	Woodland	6,637	$50 per quarter
Florida	Lake Worth	7,408	$25 per annum
Georgia	Albany	19,055	$250 per annum
	Griffin	13,223	$75 per annum
Iowa	Fort Dodge	22,904	$35 per day
	Keokuk	15,076	$5 per day
	Mason City	27,080	$3 per day
Kentucky	Corbin	7,897	$10 per week
	Somerset	6,154	$7.50 per day
New York	Ithaca	19,370	$5 per month
	Massena	11,328	$50 per annum
Pennsylvania	Charleroi	10,784	$5 per day
	Duquesne	20,693	$2 per day
	Grove City	6,296	$25 per annum
	New Brighton	9,630	$5 per day
Wisconsin	Marshfield	10,359	$10 per day

articles of merchandise throughout the nation, it is manifest that they cannot be enforced as to dissemination of printed information and opinion. The safety of the nation often depends upon wide-spread circulation and distribution of information and opinion for the enlightenment and education of the entire population. This needed nation-wide distribution would be hampered, if not destroyed, by permitting such license taxes to be imposed upon distributors who often voluntarily engage in this work and who must be financed from other sources as they go along.

It cannot be fairly contended that the distributor can pass on to the *consumer* the additional burden imposed by reason of the license tax. The *consumer* is as fully entitled to be free of the same burden as is the distributor. Freedom of press and (or) worship protects the conveyer of ideas as well as the receiver of ideas. Here the conveyers of ideas, Jehovah's witnesses, are discharging their trust or obligation imposed as trustees for the receivers of the literature to urge in behalf of the *consumer* that the license tax is a burden on the receiver or consumer as well as on the distributor. The entire avenue should be kept open for *both the distributor and the distributee* or receiver. In making this claim Jehovah's witnesses are not requiring a special privilege for themselves, but they are discharging to this Court the responsibility which they owe as citizens of these United States and to this Court by clearly showing wherein this sort of license tax injures not only petitioners but also every citizen in the United States who might desire to pamphleteer on any matter: political, social or religious. Jehovah's witnesses do not claim they are immune from all kinds of taxes. They pay income taxes; ad valorem realty taxes on their homes; license taxes on their automobiles; sales taxes on their food, etc. However, the charitable organization which they use to preach the gospel is, like all religious organizations, exempt by statute from the payment of state and federal taxes of all kinds. None of the above taxes, as distinguished from the license taxes in the present

case, have a prohibitory or censorial quality or operate as conditions precedent to the publication or circulation of literature explaining the Bible. The license tax, however, does that very prohibitive evil thing.

14

Peddlers' and occupational license-tax ordinances have uniformly been held unconstitutional when applied to interstate commerce and declared a burden upon such transactions.

The word "abridge" as we have heretofore pointed out, means to "shorten" or "curtail" or "burden". The rights of freedom of speech, press and worship are abridged by any statute or ordinance which burdens the exercise thereof. Consistently and universally this Court has struck down, time and again, all attempts on the part of the states or their municipalities to license the peddling, hawking, selling or solicitation of sales directly to the consumer through interstate commerce. (*McGoldrick* v. *Berwind-White Coal Co.*, supra; *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, 494-496; *Caldwell* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128; *Real Silk Hosiery Mills* v. *City of Portland*, 268 U. S. 325, 335-336; *Carson* v. *Maryland*, 120 U. S. 502; *Asher* v. *Texas*, 128 U. S. 129; *Stoutenburgh* v. *Hennick*, 129 U. S. 141; *Brennan* v. *Titusville*, 153 U. S. 289; *Stockard* v. *Morgan*, 185 U. S. 27; *Crenshaw* v. *Arkansas*, 227 U. S. 389; *Rogers* v. *Arkansas*, 227 U. S. 401; *Stewart* v. *Michigan*, 232 U. S. 665; *Davis* v. *Virginia*, 236 U. S. 697.) The business interests affected in those cases were not put to the burden of proving that the amounts exacted were unreasonable, or excessive.

Yet here, where matters much weightier than commerce are involved, the court below has imposed such a burden

on petitioners, evidently upon the theory that the ordinance under review exacted fees as compensation for services rendered. However, the ordinance does not purport to be of this character or to be other than general taxing measure; nor has it been construed by the court below to provide for reimbursement for expenses incurred by the city in policing the streets. This Court, in commerce cases, has laid down the definite rule that license taxes will be struck down where it did not "affirmatively" appear that the licenses were imposed, not as ordinary taxes, but as reimbursement for expenses incurred by the taxing authority. (*Bingaman* v. *Golden Eagle Western Lines*, 297 U. S. 626, 628; *Ingels* v. *Morf*, 300 U. S. 290, 294; *McCarroll* v. *Dixie Greyhound Lines, Inc.*, 309 U. S. 176, 181) It is difficult to understand why this rule well established in commerce cases should have been disregarded by the majority opinion on June 8, 1942, in *Jones* v. *Opelika*, supra; it should be given its due consideration here.[15]

In *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 39, this Court said that the license tax ordinance is very likely to be used "as an instrument of discrimination against interstate or foreign commerce."

Freedom of speech, press and worship are far more sacred and mean more to the welfare of the nation than does interstate commerce. It is therefore plain that if the Court properly protects interstate commerce from a burden of this type of license tax law, it could more easily and should more readily establish the same rule so as to prohibit any sort of burden or abridgment of the fundamental personal rights protected under the First and Fourteenth Amendments.

[15] See also pages 8 and 9 of the slip opinion of the dissent by Chief Justice Stone in *Jones* v. *Opelika*, supra.

15

State courts and lower federal courts have consistently held that the license tax ordinances are unconstitutional when applied to the activity of Jehovah's witnesses.

The Supreme Court of Vermont, on November 5, 1941, in the case of *State* v. *Greaves*, supra, held that an ordinance providing for the payment of a tax and obtaining of a license, which is identical to the ordinance involved in this case, was unconstitutional when applied to the preaching activity of Jehovah's witnesses, because it was a direct burden upon the rights of freedom of press and of worship. That court based its decision upon *Grosjean* v. *American Press Co.*, supra.

This was followed by *Commonwealth* v. *Reid*, supra, by the Superior Court of Pennsylvania, which held that the license tax ordinance of the Borough of Clearfield, Pennsylvania, was unconstitutional when construed and applied to the preaching activity of Jehovah's witnesses upon the public streets of the borough.

These cases were followed by the Supreme Court of Illinois in *Blue Island* v. *Kozul*, supra, where an ordinance providing for the license tax payment by vendors of merchandise was declared to be an unconstitutional abridgment of the rights of freedom of press when applied to the preaching activity of Jehovah's witnesses. A motion for rehearing was duly overruled by the Supreme Court of Illinois. When the decision by this Court on June 8, 1942, in *Jones* v. *Opelika*, supra, was filed, forthwith the City of Blue Island was permitted to file its second motion for rehearing in the Supreme Court of Illinois. Upon consideration of said second motion for rehearing, that Court boldly declined to follow the majority of this Court in the *Jones* case, holding that the Illinois Constitution was much stronger than the Federal Constitution as construed by this

Court on June 8, 1942, and would not permit the reaching of such conclusion as had been reached by this Court in that case.

In the Spring of 1942, the Supreme Court of Appeals of Virginia, in the case of *McConkey* v. *Fredericksburg*, 179 Va. 550, 19 S. E. 2d 682, declared unconstitutional the ordinance in question providing for payment of a license tax because a burden upon the fundamental personal rights of Jehovah's witnesses to distribute literature and simultaneously receive money contributions.

The Court of Appeals of New York, in the case of *People* v. *Barber*, supra, decided January 7, 1943, refused to construe the license tax ordinance of Irondequoit so as to include the preaching activity of Jehovah's witnesses, because the Court stated that to do so would make the ordinance unconstitutional, and in order to avoid declaring the ordinance unconstitutional, it was held not to include the preaching activity of Jehovah's witnesses. In that case, among other things, the Court of Appeals, said:

> "Upon this appeal we must decide the question whether the ordinance, properly construed, requires a member of a religious sect to obtain a license in order to be permitted to sell or offer to sell the Bible and religious tracts without profit to himself, before we reach any question whether the ordinance so construed would infringe the rights of freedom of worship, and of freedom of speech and press, guaranteed not only by the Constitution of the United States but in perhaps even plainer language by the Constitution of the State of New York. Parenthetically we may point out that in determining the scope and effect of the guarantees of fundamental rights of the individual in the Constitution of the State of New York, this court is bound to exercise its independent judgment and is not bound by a decision of the Supreme Court of the United States

limiting the scope of similar guarantees in the Constitution of the United States. . . .

"The Bill of Rights embodied in the Constitutions of the state and nation is not an arbitrary restriction upon the powers of government. It is a guarantee of those rights which are essential to the preservation of the freedom of the individual—rights which are part of our democratic traditions and which no government may invade. Where a legislative body has sought to invade a field from which under the Bill of Rights the government is excluded, and has violated rights guaranteed by the Constitution, the courts must refuse to recognize or sanction the legislative decree—but legislative bodies are no less responsible than the courts for the preservation of the liberties of the individual, guaranteed by the Bill of Rights, and legislative bodies, as a general rule, accept no less sincerely the democratic traditions and principles which the Bill of Rights expresses. We may not impute to a legislative body an intent to adopt a statute or ordinance which might be used as an instrument for the destruction of a right guaranteed by the Constitution which executive and legislative officers of government, no less than judges, are sworn to maintain. For that reason an ordinance or statute should be construed when possible in manner which would remove doubt of its constitutionality, and possible danger that it might be used to restrain or burden freedom of worship or freedom of speech and press. . . .

". . . We conclude this opinion by a quotation from that brief [filed by the Committee on Civil Rights of the New York State Bar Association, the Committee on the Bill of Rights of the Association of the Bar of the City of New York, and the Committee on Civil Rights of the New York County Lawyers Association, *amicus curiae*]: 'It may seem to some that appellant's activities were of such a character that, at this critical

period in world history, the Courts and the Bar need not be particularly concerned with their repression. But, if appellant's activities involved the exercise by him of fundamental rights guaranteed by the Federal and State Constitutions, the violation of those rights cannot be disregarded as of trivial consequence. Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever before, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life. We can find no reason to doubt that the ordinance was not intended to furnish an instrument by which the right of any group to spread its religious beliefs, or even social opinions, could be curbed."

See, also, *Hough* v. *Woodruff*, supra

Similar conclusions have been reached by United States District Courts in the cases of *Douglas* v. *Jeannette*, supra; *Reid* v. *Brookville et al.*, 39 F. Supp. 30; *Borchert* v. *City of Ranger et al.*, 42 F. Supp. 577.

Furthermore, the license tax law cannot be distinguished from the ordinances declared unconstitutional in *Lovell* v. *Griffin*, supra, and *Schneider* v. *State*, supra. The ordinances in those cases provided for the obtaining of a license or permit from the city manager and chief of police, respectively. Those cities required the license for which no fee or price was asked. Here the City of Jeannette requires a fee or the payment of a tax before the license can be obtained. One must thus purchase his privileges secured by the Constitution against abridgment. The Irvington and Griffin ordinances are admittedly unconstitutional. By greater force of reasoning the ordinance here involved is unconstitutional because it denies the right to distribute literature, except to those wealthy enough to pay for the privilege of exercising their constitutional rights or distribute

broadsides free and without charge. One financially unable to pay is denied the privilege. The right thus becomes the prerogative only of the well-to-do and ultrarich.

CONCLUSION

All well informed persons who have followed the history of the persecution of Jehovah's witnesses in the United States are well aware of the fact that the enemies of such Christians who have engineered their persecution are also "home grown enemies" of the Bill of Rights. Such persecutors are thus enemies of every person who desires and cherishes liberty.

The fundamental personal rights guaranteed in the First Amendment—made applicable against the states by the Fourteenth—are assigned by this Government as the basic reasons for resisting the aggression of the Axis powers, and for this cause the people have dedicated a needed gigantic army to remove forever from the earth this threat of the totalitarian nations against these freedoms.

While mechanized armies are locked in battle in various parts of the earth to determine whether or not these liberties shall remain, there continues to be prosecuted a persistent fight and internal aggression against the four freedoms on the "home front" by misapplication of laws and ordinances to stop the preaching activities of Jehovah's witnesses. Whether the prosecutors of such internal aggression realize it or not, they have blindly attempted to "pull the house down" upon Jehovah's witnesses, in utter disregard of the fact that in so doing they are destroying the foundation and corner stone of democracy, their own place of refuge.

Justice Brandeis aptly describes the threat of such persecution thus: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding." (Dissenting in *Olmstead* v. *United States*, 277 U. S. 479.)

Jehovah's witnesses, at the cost of name, reputation, property, fortune and even life itself, have resisted and continue to resist this all-out assault against liberty by carrying on their house-to-house and public street preaching, in spite of overwhelming odds, and at the same time defending and pushing on in the courts the fight against the internal aggressors.

They have reached this Court time and again in numerous cases to enable this Court to discharge its duty in this time of peril by expounding the Constitution and the Bill of Rights so as to cover the liberties of unpopular minorities as well as the popular majority. In all these battles it must be admitted that Jehovah's witnesses are *fighting on the home front for liberty.*

The attitude shown this internationally unpopular group of Christians known as Jehovah's witnesses determines the fate of the nation: whether it remains a democracy while blood is shed at farflung battle-fronts by its soldiers for the life of the Constitution, or whether the nation will turn totalitarian by shelving the Bill of Rights "for the duration" —as a *relic* never again to be unwrapped.

Above this international issue there is a much greater issue to be decided by the opposers of Jehovah's witnesses as stated by Judge Gamaliel concerning Jehovah's witnesses of ancient time—

> "And now I say unto you, Refrain from these men and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."—Acts 5:38, 39.

Respectfully and confidently submitted,

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